

# Consultation Response

## UN Call for Submissions for the eleventh session of the Open-Ended Working Group on Ageing

31 October 2019

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## About this consultation

- The UN has issued a call for written submissions to support the preparation for the eleventh session of the Open-Ended Working Group on Ageing (OEWG) in July 2019. The call is for substantive inputs on the two new focus areas of **Right to Work and Access to the Labour Market** and **Access to Justice**.
- There has also been a call for inputs in the form of normative content for a possible international instrument on the two focus areas that were discussed in the tenth session of the OEWG in April 2019, **Social Protection and social security including social protection floors** and **education, training, lifelong learning and capacity-building**.

## Introduction

1. Age UK is a national charity that works with a network of partners, including Age Scotland, Age Cymru, Age NI and local Age UKs across England, to help everyone make the most of later life, whatever their circumstances. In the UK, the charity helps more than seven million older people each year by providing advice and support. It also researches and campaigns on the issues that matter most to older people. Its work focuses on ensuring that older people have enough money; enjoy life and feel well; receive high quality health and care; are comfortable, safe and secure at home; and feel valued and able to participate.
2. Internationally, we support programme and policy work in lower- and middle-income countries through our partner and subsidiary charity Age International, who has contributed to this submission. Age International is an active member of the HelpAge Global Network and the Global Alliance for the Rights of Older People, a large and growing coalition of civil society organisations world-wide working to strengthen older people's rights globally.
3. The rights to work and access to the labour market, and access to justice for older people are not enshrined in international human rights law. These rights need to be set out within a convention on the rights of older persons to ensure that they have the necessary tools and resources to resolve the legal problems they face, and have access to decent work, without discrimination and on an equal basis with others. Age UK and Age International firmly believe that a UN Convention on the rights of older persons would provide a framework and focus to guide policy responses to ageing based on rights, equity and social justice. It also has the potential to create a shift from older people being considered as passive recipients of welfare, to older people as active rights holders and to reduce the level of abuse, neglect and discrimination experienced by many older people.

## Right to Work and Access to the Labour Market

4. While the employment rate for 50-64 year olds has increased in recent years, long-term unemployment remains a particular problem for people aged 50 and over, with 35 per cent of those who are unemployed having been so for more than a year, higher than any other age group.<sup>1</sup> There are many older people who would like to work but are denied the opportunity, for example because of low skills, caring responsibilities or age discrimination by employers, or because they do not get the unemployment support they need. Older women, who are more likely to have had responsibility for caring and other domestic work over their lifetimes, face particular barriers to accessing paid and decent work as they age.

### Age discrimination

5. The Equality Act 2010 provides a set of legislative tools for tackling age discrimination both within the realm of employment and in the provision of goods and services, which has greatly benefited older people in the UK. Replacing the Employment Equality (age) Regulations 2006, the Equality Act expanded legal protection for the rights of older people and reinforced the remedies that exist when these rights are breached in employment, financial and consumer services, and health and social care.
6. Employers used to be able to force workers to retire at 65 (known as the Default Retirement Age), but this law was phased out through 2011. There have also been changes to State Pension age, the earliest age at which a person can start receiving their State Pension. In November 2018, State Pension age was 65 for men and women. However, this is gradually increasing and will reach 67 by 2028. As State Pension Age rises, many people will need to work for longer
7. In recent years there is some evidence that attitudes to older employees have improved in the UK, at least in some large businesses. However, workers aged 50+ still face barriers in accessing work and training. Polling by YouGov commissioned by Age UK in 2017 found that 36 per cent of over 55-64 year olds felt they had been disadvantaged at work because of their age. Recruitment is the point in the employment cycle at which discrimination is most likely to occur, even though it is rarely reported and difficult to take action against. Common stereotypes of older workers, for example that they are waiting to retire, inflexible, or regularly off sick, are still commonly believed, even though they are not applicable to the majority.

### Flexible working

8. Research by Age UK estimated that in 2012 38 per cent of 50+ workers used some form of flexible working.<sup>2</sup> Flexibility is important to older workers, particularly for those with caring responsibilities, health problems, or seeking a gradual retirement. Legally, the right to request flexible working in the UK only applies to workers who have been in the job for more than 26 weeks, meaning people who might need

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<sup>1</sup> Office of National Statistics, *Labour market statistics*, October 2019

<sup>2</sup> Age UK, *A means to many ends: older workers' experiences of flexible working*, 2012.

some flexibility to move jobs or get back in to the workforce have no legal right to request. Age UK advocates for a system of 'flexible by default', where employees could assume they can work flexibly unless the employer can demonstrate otherwise, which would apply to all employees including those starting a new job – this would reduce barriers preventing people with caring responsibilities from getting back into work.

## Caring

9. Caring impacts people's ability to remain in work in later life, even when they are caring for as few as five hours per week. People aged 50–64 are most likely to be carers with the impact of care on work varying depending on the carer's occupational group – with those in higher skilled occupations (i.e. managerial or professional roles) likely to make smaller reductions in their working hours than those in lower skilled groups. The transition to being a carer presents particular risk to older people's employment – the failure of employers and the care and support system to help people through this transition risks their long term withdrawal from the labour market.

## Legal redress

10. If someone has experienced direct or indirect discrimination, harassment or victimisation in the workplace, they can bring a claim under the Equality Act to the Employment Tribunal. However, the balance of power within the Employment Tribunal (ET) system is heavily weighted in favour of employers, in particular large employers, who are more likely to have ready access to legal advice and understand the processes and systems involved. There is legal aid for initial advice in employment discrimination claims which is accessed via a telephone gateway. However, evaluation of this service suggests that it has been underused compared with predicted take-up, which may be due partly to a lack of public awareness.<sup>3</sup> There are also concerns that the reduction in Law Centres and advice services as a result of legal aid cuts has made it even harder for people to access the employment law advice they need.
11. In 2013, the Employment Tribunal introduced fees ranging up to £1200. Age discrimination claims received by the ETs had typically numbered around 900 to 1200 each quarter, prior to fees being introduced. Afterwards, this fell to roughly 200 to 500 per quarter – more than halving the claims made. Since the abolition of ET fees in 2017, there has been a nearly threefold increase in the number of ET claims in the period of April to June 2018 when compared to the same quarter in 2017.<sup>4</sup> It is now very clear that ET fees restricted access to justice and reduced incentives for employers to comply with discrimination laws. Introducing fees to pursue age discrimination cases made it easier for employers to discriminate against older workers exacerbating the difficulty of staying in work until (the increasing) State Pension Age.

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<sup>3</sup> The Equality and Human Rights Commission, *The impact of LASPO on routes to justice report*, 2018, p.12.

<sup>4</sup> Ministry of Justice, *Tribunals and Gender Recognition Statistics Quarterly*, April to June 2018 (Provisional), September 2018

## Access to Justice

12. Older people in the UK face both individual and systemic barriers to resolving legal problems. Individual barriers such as a lack of understanding of their rights<sup>5</sup>, loss of capacity, and cognitive and physical disability. For example, 850,000 people are estimated to be living with dementia in the UK, of whom 808,000 are aged 65 years or over. By 2025, the number is expected to rise to 1.14 million. Almost two thirds (59 per cent) of people aged 80 and over in the UK have a disability. Older people may be afraid or feel powerless to realise their rights, particularly if they are experiencing frailty or very unwell, which can impact on their capacity.
13. Systemic barriers such as cuts to legal aid, changes to eligibility scope, the increase in court and tribunal fees, digital exclusion and significant funding cuts to the provision of information and advice services have also impacted on older people's ability to resolve legal problems. Although there has been some analysis of access to justice more broadly in the UK, there has been very little focus on the specific access to justice needs of older people.

### Information and advice

14. There are various sources of free legal information and advice available in person, online or via telephone in the UK. For example, local Age UK offices have their own information and advice service and help with issues such as social care, welfare benefits and housing. Citizens Advice are locally run charities operating in most areas of the country. They advise on a range of legal problems including debt, benefits, housing, employment and consumer problems. Law Centres are independent, locally based charities providing free legal advice and representation in specific areas of social welfare law (e.g. welfare benefits, disability rights, housing, employment and debt). These services provide information and support and can refer individuals to lawyers for legal advice and representation.
15. Recent cuts to the provision of funding for many advice agencies and law centres, has made it even harder for people to access the advice they need. For example, charitable advice agencies have traditionally provided advice on debt, housing and welfare benefits. However, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 abolished legal aid for most social welfare matters from April 2013. Furthermore, with much funding for charities coming from local authorities, significant cuts to local authority budgets as a result of austerity have meant that in addition to a loss of legal aid funding, charities have also seen their funding from local government drop. As a result, many advice agencies, law centres and citizens advice bureaux have closed since the cuts began. For those agencies left, services are busy and struggling to meet demand; lack of resources means that a limited service is available with a limited number of enquiries being dealt with face to face.

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<sup>5</sup> Age UK and the British Institute of Human Rights, *Older People and Human Rights: a reference guide for professionals working with older people*, 2011.

## Legal aid for legal advice

16. The provision of legal aid has existed in the UK since 1949 as part of the establishment of the UK welfare state. Since its inception, legal aid spending has increased steadily so that total expenditure reached approximately £2.2bn in 2010. With most of this expenditure on criminal legal aid, there has been consistent criticism of the legal aid budget, with successive governments trying to reduce expenditure, culminating in 2012 when the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) reduced legal aid expenditure by £1.6 billion. As a result, large areas of civil legal aid were removed from coverage including most housing, family, immigration, employment and welfare benefit problems.
17. Civil legal aid fees in many areas have been frozen since the 1990s - resulting in real term cuts of more than 40 per cent - which means the work is no longer sustainable for many lawyers. This has contributed to legal aid deserts, which are areas of the country where people who need legal advice – most notably for housing and community care – cannot access a local service. For older people, this is coinciding at a time when they are more likely to need access to legal aid in these areas. For example, older people, who are increasingly turning to the private rented sector for housing, and who are facing eviction and homelessness are struggling to get the local face-to-face advice they're legally entitled to. This is because the provision of legal aid advice for housing is disappearing in large areas of England and Wales, creating legal aid deserts.<sup>6</sup>

## Digital transformation and the move to online justice

18. The Government is currently investing £1 billion over seven years to modernise the courts and tribunals system, to create services that are digital by default and design including, moving cases online, closing physical court structures, and introducing virtual hearings. For people who use the internet, this can make access quicker, easier, and cheaper. Although, the trend over the last decade has been for increasing internet use among the older population, many older people are not online and around a quarter (23 per cent) of people aged 65-74 and three out of five (60 per cent) of those 75+ do not use the internet.<sup>7</sup> Older people are not only less likely than younger people to go online, but those who use the internet are more like to be 'narrower' users, carrying out fewer activities
19. To enable older people to participate in online justice, assisted digital support services are being offered to help people who are less confident using online systems to navigate the new digital courts and tribunals system. However the reality is that this support and assistance does not always provide what older people need.

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<sup>6</sup> Analysis © 2019, The Law Society, Source data.

<sup>7</sup> Office of National Statistics, *Internet Users in the UK*, Percentage who have used the internet in the last 3 months (table 1B), 2017

## **Normative content for the right to lifelong learning, education and skills-building<sup>8</sup>**

### **Definition**

1. Older persons have the right to lifelong learning, education and skills-building on an equal basis with others and without discrimination, so they can live autonomous and independent lives, fulfil their aspirations, build their skills and capacities, develop their full human potential and sense of dignity and self-worth, and participate fully in society.

### **Scope of the right**

#### Non-discrimination

2. Older persons have the right to acquire and utilize their knowledge and skills without discrimination and on an equal basis with others.

#### Availability

3. Older persons have the right to all forms of lifelong learning, education and skills-building, including but not limited to tertiary education, vocational training and retraining, digital and new technology-based education, adult education, self, informal, recreational and community-based education, lifelong learning programs, legal literacy, and skills training in literacy, numeracy and technological competencies.

#### Acceptability and adaptability

4. Older persons have the right to equal access to opportunities of lifelong learning, education and skills-building available to the general public and to learning opportunities adapted to their specific needs, including duration of study and communication needs, skills, motivations, preferences and diverse identities.

#### Accessibility

5. Older persons have the right to affordable lifelong learning, education and skills-building opportunities.

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<sup>8</sup> These suggested normative elements have been developed by a working group of Global Alliance for the Rights of Older People (GAROP) members.

6. Older persons have the right to lifelong learning, education and skills-building opportunities in settings that are accessible to them, including in their communities and in care and support settings.
7. Older persons have the right to information about lifelong learning, education and skills-building opportunities and how to access them.

### Participation

8. Older persons have the right to participate in the decision-making processes regarding the shape and content of lifelong learning, educational and skills-building programs aimed at older adults.
9. Older persons have the right to participate as teachers and sources of knowledge in lifelong learning, educational and skills-building programs for all generations.

### Remedies and redress

10. Older persons have the right to accountability mechanisms that provide for remedies and redress when their rights are violated.

## **State Obligations**

States Parties shall take effective and appropriate measures to ensure:

### Non-discrimination

11. Older persons have equal access to opportunities for all forms lifelong learning, skills-building and levels of education without discrimination based on age or any other grounds.
12. Older persons have the same opportunities as others to benefit from scholarships and other educational or study grants.
13. Systems and mechanisms are put in place so that all older persons are able to upgrade their acquired knowledge and skills and utilise them for the benefit of all.
14. Reasonable accommodation of an individual's requirements is provided.
15. The elimination of negative ageist stereotypes and prejudices about older persons' ability and willingness to learn, and the value and importance of learning, education and skills building in older age.

### Availability

16. All forms of lifelong learning, education and skills-building are available to older persons, including but not limited to tertiary education, vocational training and



retraining, digital and new technology-based education, adult education, self, informal, recreational and community-based education, lifelong learning programs, legal literacy, and skills training in literacy, numeracy and technological competencies.

### Acceptability and Adaptability

17. Older persons have access to lifelong learning, education and skills-building opportunities, adapted to their specific needs, skills, motivations, preferences and diverse identities.
18. Sufficient funds are allocated for lifelong learning, education and skills-building opportunities for older persons.

### Accessibility

19. Older persons have access to affordable lifelong learning, education and skills-building opportunities.
20. Older persons have access to lifelong learning, education and skills-building opportunities in the settings in which they choose to live, including in their communities and in care and support settings.
21. Older persons have access to information about lifelong learning, education and skills-building opportunities and how to access them.

### Participation

22. Older persons have opportunities to participate in the decision-making processes regarding the shape and content of learning, educational and skills-building programs aimed at older adults.

### Remedies and redress

23. Safeguards are put in place to protect against breaches of the right to lifelong learning, education and skills-building, including breaches of privacy and security of data on digital, online and new technology-based learning platforms.

## **Normative Content of Social Protection and Social Security (including social protection floors)<sup>9</sup>**

### **Definition**

1. Older persons have the right to social protection and social security without discrimination based on age or any other ground, so they can live with dignity and fully participate in society.

### **Scope of the right**

#### Autonomy and independence

2. Older persons have the right to unconditional, autonomous use of income and in-kind entitlements from social protection and social security schemes.

#### Availability

3. Older persons have the right to social protection and social security systems which provide universal coverage, whether in cash or kind, contributory or non-contributory, to ensure an adequate standard of living, adequate income security, access to health care, medication and assistive devices, and access to support and care services for autonomous and independent living in older age.

#### Adequacy

4. Older persons have the right to social protection and social security measures, whether in cash or kind, that are of a high enough value, quantity and quality, and for the full period of life, for an adequate standard of living and so that they can live autonomous, independent lives with dignity and can fully participate in society.

#### Accessibility

5. Older persons have the right to affordable social protection social security measures, with any contributions stipulated in advance and any direct or indirect costs being affordable for all.
6. Older persons have the right to information on all aspects of social protection and social security schemes, including eligibility and qualification.

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<sup>9</sup> These suggested normative elements have been developed by a working group of Global Alliance for the Rights of Older People (GAROP) members.

7. Older persons have the right to social protection and social security measures provided in a timely manner which are accessible in whatever setting they live.

#### Non-discrimination

8. Older persons have the right to social protection and social security measures without discrimination on the ground of sex, gender or any other grounds.
9. Older persons with disabilities have the right to social protection and social security measures on an equal basis with others without discrimination on the basis of their age, disability or any other ground.
10. Older persons who have been forcibly displaced, older refugees and asylum seekers have the right to access social protection and social security measures available to the general population.
11. Older persons with migration histories have the right to the recognition of their social security contributions and pension entitlements.

#### Participation

12. Older persons have the right to participate in the decision-making processes regarding the shape and content of social protection and social security measures for older persons.
13. Older persons have the right to participate in the management and administration of social protection and social security measures for older persons.

#### Acceptability

14. Older persons have the right to cash and in-kind social protection and social security, including support and care services that are appropriate and acceptable for their needs and preferences.

#### Remedies and redress

15. Older persons have the right to make complaints, appeal and seek redress for practices that deny their right to social protection and social security.

## **State Obligations**

States Parties shall take effective and appropriate measures:

### Autonomy

16. To ensure older persons' autonomous use of social protection and social security measures.

### Availability

17. To ensure social protection and social security schemes are sustainable, universally available and in place to ensure older persons are provided with social protection and social security for the relevant risks and contingencies they face, including in relation to care and support.

### Adequacy

18. To ensure social protection and social security measures, whether in cash or kind, are of a high enough value, quantity and quality, and for the full period of life, for an adequate standard of living and so that older persons can live autonomous, independent lives with dignity and can fully participate in society.

### Accessibility

19. To ensure older persons have access to support in application processes for social protection and social security measures without delay, including older persons without identity documentation.
20. To ensure delivery mechanisms for social protection and social security measures are adapted so they are accessible and affordable for all older persons without discrimination.
21. To ensure older persons have access to information on all aspects of social protection and social security schemes, including eligibility and qualification.

### Non-discrimination

22. To ensure the elimination of any discrimination or bias in the design, delivery and level of entitlements in social security and social protection measures.

23. To facilitate through bilateral treaties and other mechanisms, the recognition of social security contributions and pension entitlements for older persons with migration histories.

24. To ensure older persons who have been forcibly displaced, older refugees and older asylum seekers access to social protection and social security measures available to the general population.

#### Participation

25. To ensure older persons can participate in the decision-making processes regarding the shape and content of social protection and social security measures for older persons, their management and administration.

#### Acceptability

26. To ensure cash and in-kind social protection and social security, including support and care services, is appropriate and acceptable for the needs and preferences of older persons.

#### Remedies and redress

27. To ensure older persons have access to effective complaint and appeal mechanisms to seek redress for practices that deny their right to social protection and social security.

#### **Non-state parties**

28. Under their duty to protect, States have an obligation to ensure that all non-state parties involved in the provision of social protection and social security for older persons comply with the standards above.